IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9970 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHATURBHAI BIJALBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR HL LJANI, Learned AGP for Respondent No. 1, 3, 4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/11/2000

ORAL JUDGEMENT

Heard learned advocate Mr. N.K.Majmudar for the petitioner, learned AGP Mr. H.L.Jani for respondents no. 1,3 and 4, learned advocate Ms. P.J.Dawavala for

respondent no.2.

1. The petitioner has challenged the detention order dated 27/7/2000 passed by the District Magistrate, Vadodara in exercise of powers conferred under Section 3(2) of the Prevention of Black Marketing and Supplies of Essential Commodities Act, 1980 (for short "the Act"). Copy of which is produced at Annexure-A.

2. The petitioner is a proprietor of petorl pump and has been dealing in diesel and petrol in the name and style of Viraj Auto Centre. The petitioner is holding a licence issued by the competent authority under the provisions of Essential Commodities (Licencing Control Declaration of Stock) Order, 1981. That on 7.5.2000, around 21.30 hours, District Supply Officer, Vadodara along with his staff members carried out a raid on the said petrol pump of the petitioner for inspection and took samples of petrol and diesel and also inspected the record maintained. One Harshad Dahyabhai Patel, Manager of the said petrol pump was present there and his statement was recorded. On the basis of inspection report and analysis report of samples of diesel and high speed diesel taken from the petrol pump, the competent authority concluded that petitioner has been dealing in the business of diesel and petroleum product by causing adulteration and earning undue profit causing prejudicial effect on the social economy. That the explanation submitted by the petitioner to the notice served having not been found proper, the competent authority considered it necessary that alternative remedy not being sufficient to prevent the petitioner from indulging into prejudicial activity, the detention order under Section 3(2) of the Act is necessary and hence, impugned order is passed. The impugned order was served on the same day and the petitioner was ordered to be kept at Bhavnagar District Jail as prisoner of category no.2.

3. The petitioner has challenged the impugned order on numerous grounds. It is contended on behalf of the petitioner that representation made by the petitioner against the impugned order dated 1.9.2000 was not considered promptly by the authority which has violated the constitutional mandate and as such, the continuous detention of the petitioner is bad, the impugned order deserves to be quashed and set aside and petitioner should be set at liberty.

4. Learned AGP Mr. H.L.Jani relied on affidavit filled by Mr. P.R.Shukla, Deputy Secretary Government, Food, Civil Supplies and Consumers Affairs Department,

Gandhinagar dated 14.11.2000 and urged that representation dated 1.9.2000 forwarded by the petitiner/detenu was received on 6.9.2000 in the Special Branch and notings were placed on it and submitted to Under Secretary. That the Under Secretary cleared the file on 7.9.2000 and arranged to place before concerned Minister. That 9.9.2000 and 10.9.2000 being holidyas as non-working Saturday and Sunday, the Minister could clear the same on11.9.2000 and reply of the same was sent to the detenu on 14.9.2000. On a said sequence, it is urged by the learned AGP that delay in considering the representation has been sufficiently explained and it being a short delay, it cannot be construed as a fatal to the impugned order. In support of the submission, learned AGP has referred to and relied on observation made by the Hon'ble Supreme Court in the matter of Smt. Kamalabai Vs. Commissioner of Police, Nagpur and Others, reported in JT 1993 (3) SC 666.

Learned AGP has also referred to and relied on observations made by the Hon'ble Supreme Court in the matter of Jasbir Singh Vs. Lt.Governor, Delhi and Another, reported vide (1999) 4 SCC 228 (Head Note-E). It may be noted that in the matter of Kamlabai (supra) the Hon'ble Supreme Court has observed that delay in considering the representation by itself is not fatal if there is an explanation - that short delay cannot be given undue importance having regard to administrative action. Furthermore, in para.5 of the judgement of Jasbir Singh following observations have been made :

"There is no inflexible rule that delay in considering the representation in all cases ipso facto would be sufficient to render the detention void. Further what can be held to be an unexplained delay in disposing of the representation would depend upon the facts and circumstances of each case. The right to make a representation is undoubtedly a constitutional right of the detenu and such a representation should be considered as expeditiously as possible. But what is reasonable expedition will depend upon the facts of each case. Judged from the aforesaid standpoint and examining the time taken by the Central Government in disposing of the representation of the detenu and the grounds advanced by the Central Government in its counter-affidavit filed in the High Court it cannot be said that there has been an unusual delay in disposing of the representation".

5. It is pertinent to note that above stated both the judgments of the Hon'ble Supreme Court are rendered by Division Bench while in the matter of Rajmmal Vs. State of Tamil Nadu and Another, reported in AIR 1999 SC 684, Four Judges Bench considered the said issue and made following observations (Head Note A) :

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Art.22 of the Constitution for the decision to be taken on the representation the words " as soon as may be" in Cl(5) of the Art. 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay,if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well as explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Thus in the present case, the Government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thereafter, the file was submitted before the Minister who passed the order after five days and there was no explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only after five days is not a justifiable explanation, when the liberty of a citizen guaranteed under Art. 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen".

6. That the judgment of Rajmal (supra) being a judgement rendered by larger Bench, the observation would be binding and superimpose, contrary observation made by the Division Bench. That in the instant case, there is no explanation at all as to how the delay from 7.9.200 to 11.9.2000 was caused where representation of the petitioner was in consideration of the concerned Minister. In the absence of any explanation, it cannot be said to be a satisfactory explanation of a short delay. Under the circumstances, even the authority on which the learned AGP relied, cannot be of any assistance and in view of observation made by the Hon'ble Supreme Court in the matter of Rajmal (supra), the position is made clear that duration of delay is not the criteria, there must be a cogent and convincing explanation for the delay caused.

In the instant case, as there is no explanation at all and the explanation given by the learned AGP that 9th and 10th September, 2000 being holidays, the delay is of only 2 days also cannot be accepted because the Minister cannot claim advantage of holidays in the important matter concerning the personal liberty of citizen and as such, in the instant case the delay of five days being unexplained is an inordinate delay which has violated the constitutional mandate under Article 22(5) of the Constitution of India and as such, impugned order is liable to quashed and set aside.

As the petition succeeds on the above stated ground alone, it is not necessary to consider the other contentions raised in the petition and canvassed at bar.

7. As a result of above stated discussion, the present petition is allowed. The impugned detention order at Annexure-A dated 27.7.2000 passed by the District Magistrate, Vadodara against the petitioner is hereby quashed and set aside. The petitioner/detenu Chaturbhai Bijalbhai Vasava shall be released forthwith, if not required in any other case. Rule to that extent is made absolute.

At this stage it reported to the Court that pending final hearing of the petition, the petitioner/detenu was transferred to Jamnagar District Jail from Bhavangar District Jail and as such, office is directed to send the writ of this order to the Jamnagar District Jail.

(A.K.Trived,J)

(vipul)